

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA

People of California, (FR),

PLAINTIFF

DEFENDANT

No. _____
NOTICE OF AND MOTION FOR
RELIEF ON POST CONVICTION
DISCOVERY; MEMORANDUM;
PROOF OF SERVICE;

Date: ____/____/____ | Time: ____.
Loc: ____.
Dpt: ____ | Officer: ____.

[] - At Courts Notice

TO: Clerk of the Court; Judicial Officer Presiding;

TO: Parties of Interest

TAKE NOTICE that Defendant as Petitioner, hereby moves this Court for Relief re: Post-
Conviction Discovery pursuant to California Penal Code § 1054.9.

Petitioner respectfully requests that this Court schedule and hold a hearing—originally calendared
for December and subsequently canceled—at which Petitioner shall be transported and heard, in
order to resolve ongoing deficiencies in discovery production and ensure full compliance with the
courts prior orders and statutory requirement (Cal Pen § 1054.9).

1 This Motion is based upon this notice, the attached memorandum of points and authorities, the
2 statement of facts herein, the declaration of due diligence submitted prior and incorporated by
3 reference*, all records and pleadings on file in this matter, and any further evidence and argument
4 presented at the hearing.

5
6 Respectfully,

7
8 Sign: _____. Dated:

9 Print: _____.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM IN SUPPORT**

2
3 **I. INTRODUCTION**

4 This Court granted Petitioner's request for discovery pursuant to Penal Code § 1054.9, intended to
5 allow Petitioner to reconstruct the case record and prepare a post-conviction petition for writ or
6 other extraordinary relief. Although partial discovery has been produced by the District Attorney's
7 Office, it is incomplete and lacks key categories of material mandated by statute and relevant
8 authority. Petitioner now seeks relief in the form of a hearing and custodial transport to resolve
9 outstanding issues.
10

11 **II. STATEMENT OF FACTS**

- 12 1. Petitioner moved this Court under Penal Code § 1054.9 for post-conviction discovery.
13 2. The Court granted the motion and issued orders directing the District Attorney to provide
14 discovery after instruction from the appellate district was issued to force compliance.
15 3. In response, the District Attorney provided paper records only, omitting: Audio/video media,
16 Transcriptions of interviews, Fingerprint and booking information, Victim's prior case history
17 involving similar allegations, Interested communications (e.g., between law enforcement or
18 between DA and witnesses).
19 4. A hearing was set for December, but was unilaterally cancelled, and no rescheduling occurred.
20 5. Petitioner received minutes noting the cancellation and, in good faith, attempted communication
21 with the Court twice, receiving no response.
22 6. The only communication received was from the appellate district, which advised Petitioner to
23 continue communication with the trial court and file a writ if necessary.
24
25 Petitioner has been deprived of the opportunity to be heard, and seeks remedy now to complete the
26 discovery process properly.
27
28

1

2

3

4

7

8

9

10

11

1 Petitioner is not seeking a second round of discovery frivolously, but rather seeks enforcement of
2 the existing order to include materials within the scope of § 1054.9 and supporting case law (In re
3 Steele, 32 Cal.4th at 695–96).

4
5 **C. PETITIONER WAS DENIED ACCESS TO A TIMELY HEARING**
6

7 The hearing scheduled for December was improperly canceled. No new date was set. Petitioner,
8 acting with diligence, attempted to communicate with the Court and was denied a response. This
9 deprived Petitioner of the due process right to be heard before discovery could be deemed
10 completed.

11
12 This denial of access to the Court compounds the deprivation caused by incomplete discovery and
13 violates Petitioner’s right to seek full and fair post-conviction relief (In re Clark, 5 Cal.4th 750, 767
14 (1993)).

15
16 **IV. CONCLUSION**
17

18 Petitioner respectfully requests that the Court:

- 19 1. Issue an order scheduling a new hearing to address outstanding discovery items; Issue an
20 order for Petitioner’s custodial transportation for purposes of said hearing;
21 2. Direct the District Attorney to explain the omission of key materials (media, transcripts,
22 prior victim case files, etc.);
23 3. Ensure compliance with Penal Code § 1054.9 by clarifying that discovery includes all
24 materials known to the prosecution and/or law enforcement.

25 Respectfully,

26 _____
27 Sign

28 _____
Print

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- I am the defendant in the above-captioned matter, appearing here as petitioner seeking post-conviction discovery orders.
- I am seeking to reconstruct the file in this matter, of which I do not presently have a full and complete copy.
- I believe the material items requested are necessary and intend to use such items in the preparation of a petition for writ or other post-conviction relief.
- I have exercised due diligence in my attempt to procure the items listed from counsel of record and other reasonable sources, was issued a discovery order pursuant statute thereafter, having been unsuccessful, and have been provided only partial discovery thus far, and require assistance and order from this Court.

Sign _____
Print _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28